

OREGON WILDERNESS COALITION

IBLA 81-626

Decided February 22, 1983

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying protest of the State Director's failure to designate the Zane Grey wilderness inventory unit 11-16.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally -- Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Generally

Under sec. 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) wilderness review under sec. 603 of FLPMA is applicable to Oregon and California Railroad (O&C) lands only to the extent that it is consistent with the Act of Aug. 28, 1937. The Act requires O&C lands to be managed for permanent forest production. No wilderness review is required where the O&C lands are being managed for commercial timber production.

2. Administrative Procedure: Adjudication -- Administrative Procedure: Administrative Review -- Appeals -- Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

Where an appellant disagrees with the decision below and seeks to have his judgment substituted for that of the decisionmaker, his appeal will be carefully considered, with due regard for the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

APPEARANCES: Andy Kerr, Associate Director for Conservation, Oregon Wilderness Coalition; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, for Bureau of Land Management; John L. Smith, Manager, for intervenor, Southern Oregon Timber Industries Association. 1/

#### OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The Oregon Wilderness Coalition has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 19, 1981, denying its protest of the elimination of inventory unit OR-11-16 (Zane Grey) from further consideration as a wilderness study area (WSA). The elimination of the unit was announced by the State Director in a Federal Register notice on November 14, 1980, at 45 FR 75600.

The State Director's review of the public lands for wilderness characteristics is authorized by section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to suitability or nonsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) of FLPMA are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The wilderness review process undertaken by the State Office has been divided into three phases by BLM: Inventory, study, and reporting. The

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1/ By order dated July 7, 1981, we granted the request of Southern Oregon Timber Industries Association to intervene in this appeal.

State Director's announcement of the elimination of the Zane Grey unit from further wilderness review marks the end of inventory phase and the beginning of the study phase.

After reviewing the wilderness characteristics of the Zane Grey unit BLM determined that it should be dropped from further wilderness review. The rationale for that decision is stated in the November 1980 Final Intensive Inventory Decisions at page 395-96:

Portions of the unit lack opportunities for solitude due to their extremely narrow and elongated shape. Many points exist where slopes are extremely steep and the boundary is located at mid-slope or at the drainage bottom. In these areas less than a mile separates the boundary from the center. At many points the unit ranges from one-half to only one-tenth of a mile in width.

In all of these areas, the adjacent land is committed by Act of Congress to commercial timber production. In this setting apparent naturalness and opportunities for solitude are so slight as to not provide a wilderness experience.

Throughout the rest of the unit man-made structures and signs of human use, such as mining waste and debris, exist. These intrusions include a barge, concrete bridge abutments, the steel superstructure of a bridge, buildings, and other mining-related material. They are located so as to be unavoidably obvious to the visitor in the unit and their removal by hand labor or natural means is not feasible. They constitute an unacceptable loss of naturalness in the unit.

Comments called for the identification of subunits of surrounding unroaded land for study after deleting intrusions. No subunit boundaries were suggested and a review of the unit shows none are possible.

The exclusion of those portions of the unit lacking naturalness or outstanding opportunities for solitude leaves no portion intact which could be a viable wilderness review unit. Unit configuration would be extremely narrow and misshapen, and acreage would be insufficient.

Likewise no adjacent unroaded land is eligible for the review due to land-use commitments stated in the O&C [Oregon and California Railroad and Reconveyed Coos Bay Grant Lands] Act.

Appellant argues primarily that the unit boundaries were improperly drawn because BLM excluded commercial and noncommercial adjacent revested O&C lands. Appellant contends that if these lands had not been excluded from the unit, the present highly irregular border would be avoided. Appellant urges that at least those O&C lands BLM deems unprofitable should be included in the wilderness study being conducted pursuant to section 603(a) of FLPMA.

Counsel for BLM maintains that the irregular border of the unit is unavoidable under section 701(b) of FLPMA. Counsel concluded at page 4 of the answer:

When the lands suitable for commercial timber management were excluded, the inventory unit assumed an unmanageable configuration. There are two large and several small areas of commercial timber inside and surrounded by the unit. In addition, the unit consists of several narrow, elongated fingers of wilderness surrounded by commercial timber lands. In many of these areas, the unit is only 1/2 to 1/10 of a mile in width. Such lands are obviously unsuitable for preservation as wilderness.

[1] In Oregon Wilderness Coalition, 45 IBLA 347 (1980), this Board outlined the relationship between sections 603(a) and 701(b) of FLPMA. Section 603(a) mandates the review of roadless areas of 5,000 acres or more identified as having wilderness characteristics. Section 603(c) calls for management of inventoried lands in a manner that would not preclude ultimate wilderness designation. Section 701(b), however, provides:

Notwithstanding any provision of this Act, in the event of conflicting with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources; and disposition of revenues from lands and resources, the latter Acts shall prevail.

The Act of August 28, 1937 (Act), provides that O&C lands classified as timberlands shall be managed for permanent forest production with a view toward a permanent timber supply, watershed protection, local economic stability, and recreation. Since the enactment of FLPMA, it has been the consistent position of the Department that the wilderness review provisions do not apply to O&C lands that are managed for permanent forest production. Julie Adams, 45 IBLA 252 (1980); Elaine Mikels, 44 IBLA 51 (1979). The Act contains a directive to "sell, cut, and remove" timber on O&C lands according to the principle of sustained yield. The remaining uses listed in the Act are subordinate to prudent timber harvesting. We hold, again, that the mandatory review provisions of FLPMA do not apply to revested O&C lands classified as timberlands. Oregon Wilderness Coalition, *supra*. Therefore, the irregular boundaries of the Zane Grey unit were correctly drawn to exclude O&C commercial timberlands.

[2] Appellant's statement of reasons on appeal is also critical of the manner in which BLM assessed the wilderness criteria of the lands within the inventory unit as drawn. However, appellant's pleading has not demonstrated specific error of either a legal or a factual nature, nor has appellant raised new factual issues on appeal. A decision of the State Director will not be disturbed on appeal where the appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. L. J. Cornelius, 61 IBLA 279 (1982); Sierra Club, 54 IBLA 31, 37 (1981). More than mere disagreement with BLM's conclusions is required to reverse BLM's decision or place a factual matter at issue. Richard J. Leumont, 54 IBLA 242,

88 I.D. 490 (1981); Sierra Club, 53 IBLA 164 (1981). Where, as here, the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal. Richard J. Leaumont, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Oregon State Office is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Bruce R. Harris  
Administrative Judge

